

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

PROPHET PHILLIPS,

Petitioner,

vs.

Case No. 10-14139
HON. GEORGE CARAM STEEH

JEFFREY WOODS,

Respondent.

ORDER ACCEPTING AND ADOPTING MAGISTRATE
JUDGE'S REPORT AND RECOMMENDATION, DENYING PETITION FOR WRIT OF
HABEAS CORPUS, DENYING MOTION TO REMAND FOR EVIDENTIARY HEARING
[#11], DENYING MOTION TO VACATE OR SET ASIDE JUDGMENT [#12] AND
DENYING A CERTIFICATE OF APPEALABILITY

This matter is before the court on petitioner Prophet Phillips's petition for a writ of habeas corpus. This matter arises out of petitioner's conviction for second degree murder and various firearms offenses on January 29, 2008. Respondent filed an answer to petitioner's petition for a writ of habeas corpus on April 21, 2010. On June 8, 2011, petitioner filed a reply to respondent's answer. On September 8, 2011, the magistrate judge issued a report and recommendation recommending that the court deny petitioner's petition for a writ of habeas corpus, motions to vacate and set aside judgment and for an evidentiary hearing. The magistrate judge also recommended that the court deny petitioner a certificate of appealability. As of the date of this order, neither party has filed objections to the magistrate judge's report and recommendation.

The court has reviewed the petition, the Rule 5 materials, respondent's answer, petitioner's reply and the magistrate judge's report and recommendation and accepts and

adopts the magistrate judge's recommendation and denies petitioner's petition for a writ of habeas corpus.

Before petitioner may appeal the court's decision denying his petition for a writ of habeas corpus, a certificate of appealability must issue. 28 U.S.C. § 2253(c)(1)(B); Fed. R. App. P. 22(b). The court must either issue a certificate of appealability indicating which issues satisfy the required showing or provide reasons why such a certificate should not issue. 28 U.S.C. § 2253(c)(3)(B); Fed. R. App. P. 22(b); In re Certificates of Appealability, 106 F. 3d 1306, 1307 (6th Cir. 1997). A certificate of appealability may be issued "only if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). The substantial showing threshold is met if the petitioner demonstrates that reasonable jurists would find the district court's assessment of the constitutional claim debatable or wrong. See Slack v. McDaniel, 529 U.S. 473, 484-85 (2000). "A petitioner satisfies this standard by demonstrating that . . . jurists could conclude the issues presented are adequate to deserve encouragement to proceed further." Miller-El v. Cockrell, 537 U.S. 322, 327 (2003). In applying this standard, a district court may not conduct a full merits review, but must limit its examination to a threshold inquiry into the underlying merit of petitioner's claims. *Id.* at 36-37.

The magistrate judge correctly concluded that jurists of reason would not find this court's assessment of petitioner's improper bindover, actual innocence, sufficiency of the evidence, notice of the charges and sentencing claims debatable or wrong. Petitioner is not entitled to a certificate of appealability.

Accordingly,

The report and recommendation of Magistrate Judge Paul J. Komives, dated

September 8, 2011, is ACCEPTED and ADOPTED as this Court's findings and conclusions of law.

Petitioner's motion to remand for an evidentiary hearing is DENIED.

Petitioner's motion to vacate and set aside conviction is DENIED.

Petitioner's petition for a writ of habeas corpus is DENIED.

A certificate of appealability is DENIED as to all claims raised in the petition for a writ of habeas corpus.

SO ORDERED.

Dated: December 19, 2011

S/George Caram Steeh
GEORGE CARAM STEEH
UNITED STATES DISTRICT JUDGE

CERTIFICATE OF SERVICE

Copies of this Order were served upon attorneys of record on December 19, 2011, by electronic and/or ordinary mail and also to Prophet Phillips at Chippewa Correctional Facility, 4269 W M-80, Kincheloe MI 49784.

S/Josephine Chaffee
Deputy Clerk